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8 Attorneys for Plaintiff,
9 C&C JEWELRY MFG., INC.

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 C&C JEWELRY MFG., INC., a
14 California corporation,

15 Plaintiff,

16 v.

17 TRENT WEST, an individual,

18 Defendant.

19 **C09 01303**
20 CASE NO.

21 COMPLAINT FOR
22 DECLARATORY JUDGEMENT OF
23 NON-INFRINGEMENT,
24 INVALIDITY, AND
25 UNENFORCEABILITY OF U.S.
26 PATENT NOS. 6,062,045, 6,553,667,
27 6,928,734, 6,990,736, 6,993,842,
28 7,032,314 AND 7,076,972 UNDER 28
U.S.C. § 2201, DAMAGES FOR
TORTIOUS INTERFERENCE WITH
PROSPECTIVE AND EXISTING
BUSINESS RELATIONSHIPS,
UNFAIR COMPETITION UNDER 15
U.S.C. § 1051 *ET SEQ* AND CAL.
BUS. & PROF. CODE § 17200 *ET*
SEQ, AND DEMAND FOR JURY
TRIAL PURSUANT TO FED. R. CIV.
PROC., RULE 38

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30 //

31 COMPLAINT

ORIGINAL
FILED

2009 MAR 25 A 11:20

RICHARD W. WIEKING
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U.S. DISTRICT COURT
NO. DIST. OF CA. S.J.

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1 Plaintiff, C&C JEWELRY MFG., INC., ("C&C") complains of Defendant
2 Trent West ("WEST") and shows as follows:

3 **Parties, Jurisdiction and Venue**

4 1. Plaintiff C&C is a corporation existing under the laws of the State of
5 California.

6 2. Defendant WEST is an individual residing, upon information and
7 belief, in the State of California, within this judicial district.

8 3. This is a complaint for Declaratory Judgment of patent invalidity and
9 non-infringement, arising under the patent laws of the United States and for state-
10 law claims of tortious interference with prospective and existing business relations.
11 Jurisdiction is proper in this Court under 28 U.S.C. §§ 1331, 1338, 1367, 2201, and
12 2202.

13 4. Because Defendant WEST is an individual who resides in this judicial
14 district, venue is proper under 28 U.S.C. §§ 1391 and 1400.

15 **Background Facts**

16 5. Plaintiff C&C is a manufacturer, importer and distributor of jewelry.
17 Among the jewelry products C&C imports and distributes within the United States
18 are jewelry finger rings made of tungsten carbide.

19 6. Defendant WEST is the owner of U.S. Patent Nos. 6,062,045;
20 6,553,667; 6,928,734; 6,990,736; 6,993,842; 7,032,314; and 7,076,972 ("WEST
21 PATENTS").

22 7. Defendant WEST has sued a number of sellers of tungsten carbide
23 jewelry finger rings for patent infringement across the United States. Among the
24 defendants in WEST's patent infringement suits is a customer of Plaintiff C&C,
25 J.C. Penney Company, in West v. J.C. Penney Corporation, Inc. et al, Civil Action
26 6:08-cv-00212-LED, filed May 29, 2008 and currently pending in the U.S.
27 District Court for the Eastern District of Texas ("PENNEY SUIT").

1 8. Among the products accused of infringement by WEST in the
2 PENNEY SUIT are tungsten carbide rings imported by C&C and sold to J.C.
3 Penney, who in turn merely sells the rings at the retail level. Apparently for tactical
4 reasons, WEST chose to sue the retailer (Penney) rather than the importer (C&C).

5 9. Accordingly a case or controversy exists between Plaintiff C&C and
6 Defendant WEST as to whether tungsten carbide rings imported and sold by C&C
7 infringe any valid claim of any of the WEST PATENTS.

8 **Count I**
9 **Non-Infringement, Invalidity, and Unenforceability**
10 **of U.S. Patent No. 6,062,045**

11 10. The allegations of paragraphs 1 through 9 are repeated and re-alleged
12 as if set forth in full.

13 11. Upon information and belief, no tungsten carbide jewelry ring
14 imported into the United States and sold by C&C infringes any valid claim of U.S.
15 Patent No. 6,062,045 ("the '645 Patent") under any section of 35 U.S.C. § 271.

16 12. Upon information and belief, the '045 Patent is invalid for failure to
17 comply with 35 U.S.C. §§ 102, 103, or 112.

18 13. Upon information and belief, the '045 Patent is unenforceable because
19 WEST committed inequitable conduct before the United States Patent and
20 Trademark Office ("USPTO") by intentionally, and with intent to deceive, failing
21 to cite prior art known to WEST to be material to the patent application leading to
22 the '045 Patent. Such prior art includes, without limitation, patents owned by
23 Montres RADO SA disclosing jewelry formed of tungsten carbide.

24 **Count II**
25 **Non-Infringement, Invalidity, and Unenforceability**
26 **of U.S. Patent No. 6,553,667**

27 14. The allegations of paragraphs 1 through 13 are repeated and re-alleged
28 as if set forth in full.

17. Upon information and belief, the ‘667 Patent is unenforceable because WEST committed inequitable conduct before the USPTO by intentionally, and with intent to deceive, failing to cite prior art known to WEST to be material to the patent application leading to the ‘667 Patent. Such prior art includes, without limitation, patents owned by Montres RADO SA disclosing jewelry formed of tungsten carbide.

Count III
Non-Infringement, Invalidity, and Unenforceability
of U.S. Patent No. 6,928,734

19. Upon information and belief, no tungsten carbide jewelry ring imported into the United States and sold by C&C infringes any valid claim of U.S. Patent No. 6,928,734 (“the ‘734 Patent”) under any section of 35 U.S.C. § 271.

21. Upon information and belief, the '734 Patent is unenforceable because WEST committed inequitable conduct before the USPTO by intentionally, and with intent to deceive, failing to cite prior art known to WEST to be material to the patent application leading to the '734 Patent. Such prior art includes, without limitation, patents owned by Montres RADO SA disclosing jewelry formed of tungsten carbide. Additionally, WEST committed inequitable conduct before the

USPTO by intentionally, and with intent to deceive, by withholding the identity of his co-inventor, Dr. Edwin McKinnon and by claiming himself as the sole inventor, when in fact, Dr. McKinnon invented the formula for the rings.

Count IV
Non-Infringement, Invalidity, and Unenforceability
of U.S. Patent No. 6,990,736

22. The allegations of paragraphs 1 through 21 are repeated and re-alleged as if set forth in full.

23. Upon information and belief, no tungsten carbide jewelry ring imported into the United States and sold by C&C infringes any valid claim of U.S. Patent No. 6,990,736 ("the '736 Patent") under any section of 35 U.S.C. § 271.

24. Upon information and belief, the '736 Patent is invalid for failure to comply with 35 U.S.C. §§ 102, 103, or 112.

25. Upon information and belief, the '736 Patent is unenforceable because WEST committed inequitable conduct before the USPTO by intentionally, and with intent to deceive, failing to cite prior art known to WEST to be material to the patent application leading to the '736 Patent. Such prior art includes, without limitation, patents owned by Montres RADO SA disclosing jewelry formed of tungsten carbide. Additionally, WEST committed inequitable conduct before the USPTO by intentionally, and with intent to deceive, by withholding the identity of his co-inventor, Dr. Edwin McKinnon and by claiming himself as the sole inventor, when in fact, Dr. McKinnon invented the formula for the rings.

Count V
Non-Infringement, Invalidity, and Unenforceability
of U.S. Patent No. 6,993,842

26. The allegations of paragraphs 1 through 25 are repeated and re-alleged as if set forth in full.

1 patent application leading to the '314 Patent. Such prior art includes, without
 2 limitation, patents owned by Montres RADO SA disclosing jewelry formed of
 3 tungsten carbide. Additionally, WEST committed inequitable conduct before the
 4 USPTO by intentionally, and with intent to deceive, by withholding the identity of
 5 his co-inventor, Dr. Edwin McKinnon and by claiming himself as the sole inventor,
 6 when in fact, Dr. McKinnon invented the formula for the rings.

7 **Count VII**
 8 **Non-Infringement, Invalidity, and Unenforceability**
 9 **of U.S. Patent No. 7,076,972**

10 34. The allegations of paragraphs 1 through 33 are repeated and re-alleged
 11 as if set forth in full.

12 35. Upon information and belief, no tungsten carbide jewelry ring
 13 imported into the United States and sold by C&C infringes any valid claim of U.S.
 14 Patent No. 7,076,972 ("the '972 Patent") under any section of 35 U.S.C. § 271.

15 36. Upon information and belief, the '972 Patent is invalid for failure to
 16 comply with 35 U.S.C. §§ 102, 103, or 112.

17 37. Upon information and belief, the '972 Patent is unenforceable because
 18 WEST committed inequitable conduct before the USPTO by intentionally, and with
 19 intent to deceive, failing to cite prior art known to WEST to be material to the
 20 patent application leading to the '972 Patent. Such prior art includes, without
 21 limitation, patents owned by Montres RADO SA disclosing jewelry formed of
 22 tungsten carbide. Additionally, WEST committed inequitable conduct before the
 23 USPTO by intentionally, and with intent to deceive, by withholding the identity of
 24 his co-inventor, Dr. Edwin McKinnon and by claiming himself as the sole inventor,
 25 when in fact, Dr. McKinnon invented the formula for the rings.

26 **Count VIII**
 27 **Tortious Interference With**
 28 **Prospective and Existing Business Relationships**

48. These actions have damaged C&C.

49. Plaintiff C&C demands trial by jury on all issues so triable.

WHEREFORE, in view of the foregoing, Plaintiff C&C Jewelry, Inc. seeks judgment from this Court that:

- 1) C&C does not infringe any claim of the WEST PATENTS;
- 2) The WEST PATENTS are invalid;
- 3) The WEST PATENTS are unenforceable;
- 4) That WEST's conduct constitutes tortious interference with business relations and awarding damages resulting therefrom;
- 5) That WEST's conduct constitutes unfair competition and awarding damages resulting therefrom;
- 6) this is an exceptional case within the meaning of 35 U.S.C. § 285; and

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1 7) awarding C&C its costs and attorney's fees and other such relief, *at law and*
2 at equity, to which C&C may show itself to be entitled.
3

4 Respectfully submitted,
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8 by
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10 Dated: March 24, 2009
11

12 R. Joseph Trojan
13 Attorney for Plaintiff,
14 C&C JEWELRY MFG., INC.
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